

*Final*  
(1)

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
MARK ANTHONY VON BORSTEL, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 77-75

FINAL FINDINGS OF FACT, -  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for allegedly causing or allowing an outdoor fire containing prohibited materials in violation of Section 8.02(3) of respondent's Regulation I, came before the Pollution Control Hearings Board, W. A. Gissberg, Chairman, and Chris Smith at a formal hearing in Seattle on September 12, 1977.

Appellant appeared pro se, respondent appeared by and through its attorney, Keith D. McGoffin. David Akana presided.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes the

1 following

2 FINDINGS OF FACT

3 I

4 Appellant is the owner of certain real property located at  
5 9115-49th Avenue West in Everett, Washington.

6 On April 16, 1977 on such property appellant started a fire  
7 consisting of a pile of blackberry bushes and some clean lumber in  
8 preparation for construction of a driveway and garage The fire was  
9 located on the remains of numerous previous fires not caused by  
10 appellant in which residue were found metals, cans, metal roofing,  
11 paint buckets, wheels and a fuel can.

12 II

13 Oneweek earlier, appellant had called the local fire marshall's  
14 office and was advised that no permits were required for the fire during  
15 that time of year so long as the fire was properly controlled. He was  
16 not informed as to the existence of respondent and, as such, did not  
17 procure or inquire about a burning permit from respondent agency.

18 III

19 On April 16, 1977 between 1 00 and 2 00 p.m., while responding to a  
20 fire report, an investigator from the Mukilteo Fire Department discovered  
21 appellant's outdoor fire. After observing "dark" smoke coming from  
22 the 40 foot by 20 foot by 5 foot high fire, the investigator ascertained  
23 that no permits for the fire had been issued. Because of the dark  
24 smoke, he concluded that tar and oil were being consumed in the blaze.  
25 Respondent was informed of his observations.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER

IV

After ascertaining that appellant was the owner of the property, respondent issued Notice of Violation No. 12691 for having burned prohibited materials from which followed a civil penalty in the amount of \$250.

V

Pursuant to RCW 43.21B.260 respondent has filed a certified copy of its Regulation I and amendments thereto which we notice.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II

Section 8.02(3) of respondent's Regulation I provides that:

It shall be unlawful for any person to cause or allow any outdoor fire

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors . . . .

III

Although appellant did not place materials other than blackberry

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 bushes and clean lumber in the fire, he nonetheless caused prohibited  
2 materials to burn in his fire by burning a substance which produced  
3 what appellant admits was "heavy" (dense) smoke.

4 For the foregoing occurrence and pursuant to Section 3 29,  
5 respondent properly issued a civil penalty in the amount of \$250  
6 which should be affirmed Inasmuch as this is appellant's first  
7 violation, \$150 of the civil penalty should be suspended.

8 IV

9 Any Finding of Fact which should be deemed a Conclusion of Law  
10 is hereby adopted as such

11 From these Conclusions, the Board enters this

12 ORDER

13 The \$250 civil penalty is affirmed, provided however, that \$150  
14 of such penalty is suspended on condition that appellant not violate  
15 any provision of respondent's Regulation I for a period of six months  
16 from the date of this Order

17 DATED this 19th day of September, 1977.

18 POLLUTION CONTROL HEARINGS BOARD

19   
20 W. A. GISSBERG, Chairman

21   
22 CHRIS SMITH, Member

23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW  
AND ORDER